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10 CIVIC CENTER PLAZA, P.O. BOX 1379
SANTA ANA, CALIFORNIA 92702-1379 714/834-3300

834-6238

March 29, 1985

File No. P-298

State of California
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Attention: Diane Maura Fishburn

Re: Your File No. A-85-035

Ladies and Gentlemen:

Reference is made to our letter dated February 5, 1985, and your reply dated February 20, 1985, wherein you stated that you would be happy to respond to an advice request on the topic of which type of County decisions could be considered ministerial so as to be outside the scope of Government Code Section 84308. We have decided to accept your kind invitation and hereby request your advice on the following questions;

1. Does Government Code Section 84308 apply to decisions to grant or deny applications by county employees for disability retirement in counties which have retirement systems governed by the 1937 Act (Govt. Code Sec. 31450 et seq.)?

NOTE: Government Code Section 31520.1 permits a member of the County Board of Supervisors to be a member of the governing board of the retirement system. In Orange County, one supervisor does in fact sit on the governing board. We wish to know if Government Code Section 84308 applies to that supervisor, by virtue of Title 2 California Administrative Code Section 18438.1, or to all members of the governing body of the retirement system, including the supervisor.

2. Does Government Code Section 84308 apply to county sheriffs or city police chiefs when considering the issuance of concealed weapons permits pursuant to Penal Code Section 12051 et seq.?

NOTE: The issuance of said permits appears to be far more discretionary than ministerial. On the other hand, the issuance of concealed weapon permits appears to be quite different from

State of California



Fair Political Practices Commission

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February 20, 1985

Terry C. Andrus, Deputy
Office of the County Counsel
Orange County Hall of Administration
10 Civic Center Plaza
P.O. Box 1379
Santa Ana, CA 92702-1379

Re: Your Letter Dated February 5, 1985
Government Code Section 84308
Our File No. A-85-035

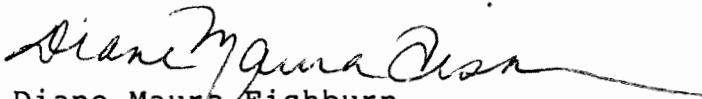
Dear Mr. Andrus:

Thank you for your letter concerning the definition of "proceeding" in Government Code Section 84308. We will certainly take your comments and information into account as we draft proposed regulations in this area. It is extremely invaluable to us to have your input.

It appears that some of the permits, licenses and other entitlements for use which you mentioned may fall into the exception for ministerial decisions. 2 Cal. Adm. Code Section 18438.2. We interpret that exception to apply to a situation where there are clear objective criteria for the issuance of a particular permit or license set forth in a statute, ordinance or regulation and the official decides only whether the facts fit the criteria. It seems that most grading and building permits would fall into this category. Some of the other decisions you mention in your letter may also be ministerial, and I would be happy to respond to an advice request on this topic.

Thanks again for your interest. I will keep you informed of any proposed changes to the regulations.

Sincerely,


Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh



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834-6238

File Nos. L-196.9,
P-297

Diane Fishburn, Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Government Code Section 84308
"Proceedings"

Dear Ms. Fishburn:

We understand that you have developed and are continuing to consider regulations interpreting and refining Government Code Section 84308.

We ask you to consider the following. In most counties and cities numerous "application[s], permit[s] and entitlement[s] for use" are granted or denied without any type of formal or informal hearings. They range from permits for foster and day care homes to concealed weapons permits, grading and building permits, certificates for occupancy and use of buildings, ambulance permits, designation of Short-Doyle facilities and so on. Typically the decision is made by a subordinate officer or employee based on inspections, background checks or similarly informal methods. Usually no personal presentations are made before any official or tribunal and there is no administrative record, although in some cases provisions are made for appeal hearings upon the denial of an application.

The prohibitions and restrictions of Section 84308 relate to "proceedings." For example, solicitations are prohibited "while a proceeding . . . is pending." (Emphasis added.) Also the disqualification provisions are triggered if contributions of \$250 or more are received within twelve months prior to "rendering any decision in a proceeding." (Emphasis added.)

The term is not defined. Prior to the recent amendment of Section 84308, its prohibitions were limited to officers of boards and commissions, i.e., the type of bodies traditionally associated with the conduct of hearings with some type of public or applicant presentation or participation. As amended, it is

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February 5, 1985

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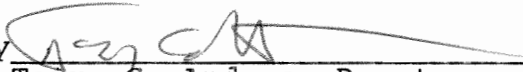
Diane Fishburn
February 5, 1985
Page 2

unclear whether the term "proceedings" would be so limited. We note that the Section now requires that disclosures be made "on the record of the proceeding," perhaps signifying that something more is contemplated than an informal staff investigation.

In any event, we request that you consider this issue in formulating regulations inasmuch as its resolution will greatly widen or limit the scope of Section 84308.

Very truly yours,

ADRIAN KUYPER, COUNTY COUNSEL

By 
Terry C. Andrus, Deputy

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